

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

ROBERT ALAN ROGINSKY,

Case No. 2:19-cv-01381-KJD-DJA

Plaintiff,

ORDER

V.

MALLORY TRIPPLETT, et al.,

Defendants.

Presently before the Court is Plaintiff's Motion to Extend Time (ECF #17) to serve the complaint. Having read and considered the motion, it is granted.

I. Factual and Procedural Background

Plaintiff, Robert Alan Roginsky (“Roginsky”), appearing *pro se*, brings a Fourth Amendment false arrest claim against Mallory Triplett, Brian Zana, and Does 2-5 (“Defendants”) for Plaintiff’s arrest on October 31, 2014. (ECF # 1-1). On August 9, 2019, Plaintiff filed an application to proceed *in forma pauperis* which the Court eventually granted on May 10, 2021. (ECF #1/4/9). Plaintiff failed to file an amended complaint and the Court dismissed all of Plaintiff’s claims except for his Fourth Amendment false arrest claim against Defendants. (ECF #7). On May 6, 2021, the Court ordered Plaintiff to send the U.S. Marshal’s office the required USM-285 forms with relevant information as to each Defendant on each form within 30 days. *Id.* at 2. Plaintiff then had 20 days after receiving copies of the USM-285 forms back from the U.S. Marshal to inform the Court which Defendants were served and which were not. *Id.* On May 25, 2022, over one year later, the Court sent Plaintiff a notice regarding intention to dismiss pursuant to Fed. R. Civ. P. 4(m) because the Court received no proof of service as to Defendants Zana and Triplett. (ECF #15). Plaintiff filed a motion for time extension, stating that he mailed the USM-285 forms and asking for more time under Fed. R. Civ. P. 4(i)(4) to contact the U.S.

Marshal's office to see if anything has been done concerning these forms. (ECF #17 at 1).

II. Legal Standard

“If a defendant is not served within 90 days after the complaint is filed, the court . . . must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m). The rule requires, however, that the court “extend the time for service for an appropriate period” when a plaintiff “shows good cause for the failure.” Id. However, courts may choose to grant time extensions “even in the absence of good cause” because courts “have broad discretion to extend time for service under Rule 4(m).” Efaw v. Williams, 473 F.3d 1038, 1040–41 (9th Cir. 2007).

III. Analysis

Plaintiff alleges that he has experienced difficulties when attempting to mail court filings and service while in custody at Clark County Detention Center (“CCDC”). According to Plaintiff, he received the USM-285 forms, mailed them to the U.S. Marshal’s office, and then never received any correspondence back. (ECF #17 at 1). Plaintiff also alleges that he attempted to file an amended complaint and the CCDC failed to mail out the complaint, instead placing it on his property to which he has no access. (ECF #16). Out of an abundance of caution, the Court will exercise its broad discretion and extend time for service under Rule 4(m) to provide Plaintiff reasonable time to cure his failure to serve summons and complaint to Defendants.

IV. Conclusion

Accordingly, IT IS HEREBY ORDERED that Plaintiff's Motion to Extend Time (ECF #17) is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff will effect service of the summons and complaint to Defendants within thirty (30) days. Failure to do so will result in Plaintiff's action being dismissed without prejudice. No further extensions will be granted.

Dated this 20th day of July, 2022.


Kent J. Dawson
United States District Judge